

REC'D TN
BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE AUG 26 AM 10 21

**IN RE: APPLICATION OF ELECTRIC
POWER BOARD OF CHATTANOOGA
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICE**

)
)
)
)
)
)

OFFICE OF THE
EXECUTIVE SECRETARY

DOCKET NO. 97-07488

**REPORT FROM THE HEARING OFFICER CONCERNING
THE STATUS CONFERENCE HELD AUGUST 5, 1998**

This matter came before the Tennessee Regulatory Authority ("Authority") pursuant to an Application filed on October 21, 1997, by the Electric Power Board of Chattanooga (hereafter "EPB") for a Certificate of Public Convenience and Necessity ("CCN") to become a competing telecommunications service provider as defined in T.C.A. § 65-4-101(e) and T.C.A. § 65-4-201. The Hearing in this proceeding began on April 23, 1998. During the course of the Hearing the Applicant, EPB, requested a continuance to prepare answers to questions posed by the Directors of the Authority, and to provide the Authority with information on its compliance with Tenn. Code Ann. § 7-52-401 to 407. The Directors instructed EPB to contact the Hearing Officer when they reached an agreement with opposing counsel on methods to present the compliance issues under Tenn. Code Ann. § 7-52-401 to 407, and when they were prepared to address the Directors' concerns. At this time the Hearing stands in recess.

The Status Conference in this proceeding was held August 5, 1998, for the purpose of determining the progress of EPB in the submission of testimony and information concerning the

Director's concerns, to establish a filing schedule, and to set a date to resume the Hearing. The Pre-Hearing Conference was conducted pursuant to Tenn Code Ann. § 4-5-306. The following appearances were entered by counsel at the Status Conference

William C. Carriger, Esq., Strang Fletcher, Carriger, Walker, Hodge & Smith, PLLC, 400 Krystal Building, Chattanooga, TN 37402, for the Electric Power Board of Chattanooga,

Patrick Turner, Esq., 333 Commerce Street, Nashville, TN 37201, for BellSouth Telecommunications, Inc

Charles B. Welch, Jr., Esq., Farris, Mathews, Gilman, Branan & Hellen, P L C , 511 Union Street, Nashville, TN 37219, for the Tennessee Cable Telecommunications Association

Jon Hastings, Esq., P O. Box 198062, 414 Union Street, Suite 1600, Nashville, TN 37219, for MCI Communications Corporation

Mr Paul Greene monitored the proceeding on behalf of the Authority Staff

Status of questions and concerns from prior to the recess called April 23, 1998.

Questions posed to EPB by the Directors at the April 23, 1998, Hearing and discussed with EPB at the Status Conference may be summarized as follows

- 1) What telephone management expertise is being presented to the Authority for evaluation?
 - A) outsource contract

EPB stated that the contract for the provision of technical services by an independent telephone contractor had not been finalized on the date of the Status Conference, but was expected in the near future. The name of the contractor with whom they were in negotiations was not divulged to the Hearing Officer at the Status Conference

B) status of negotiations

EPB stated that they were still negotiating with the unnamed independent telephone technical services provider mentioned in 1(A) above, and expected the contract to be finalized in two weeks, or by August 19, 1998

C) terms of the contract

EPB was reluctant to divulge the nature of the terms of the contract, but informed the Hearing Officer that they intended to attach a copy of the contract to its amended and restated Application or would supplement their pre-filed testimony with the terms of the contract

D) services to be provided

EPB stated that there was considerable management expertise at the Electric Power Board of Chattanooga to provide the leadership for the telephone subsidiary. The services that will be provided by the independent telephone contractor are composed of technical expertise.

2) Technical capability

A) Outsource or leasing (use of consultants or vendors, who)?

EPB indicated that they will have two independent contractors working together to fill EPB's technical needs for the telephone subsidiary. They will be using their unnamed prime contractor plus Competitive Communications Group as a vendor of supplemental services. Both contractors will remain in an advisory capacity to EPB and each will supplement the technical capabilities of the other.

B) Credentials of individuals

Credentials of individuals employed by the independent contractor, and working with EPB, will be presented to the Directors of the Authority as a part of the pre-filed testimony which EPB plans to submit on behalf of these unnamed individuals

C) Testimony

Counsel for EPB anticipates that technical testimony from EPB's independent telephone contractor will be submitted for the review, rebuttal, and cross examination of the Parties to this proceeding. To this end, EPB plans to withdraw all of its previous testimony and submit one full set of unfragmented testimony providing discussion of all the technical, legal, and policy issues before the Authority

D) Status of Competitive Communications Group

Competitive Communications Group will be retained as a vendor to complement the unnamed contractor that EPB will utilize for its technical expertise.

3) Financial capability for the telephone subsidiary, from where will it come (sources)?

A) control for cross subsidization

Both EPB and Time Warner stated that they were near an accommodation on the presentation of the Title 7, Tenn Code Ann § 7-52-401 to 407, concerns expressed by both Time Warner and the Directors at the initial portion of the Hearing. The other Parties, however, had not yet seen the proposed settlement of the Title 7 issues and requested that they be given copies of all the information on hand at that time. The counsel for BellSouth Telecommunications, Inc further stated that even though the Parties reviewed the proposed agreement it did not mean that they intended to join in a settlement of these issues

- B) form of initial financing
 - a) loan
 - b) bonds

EPB stated that initially they would be relying on a loan from the electric parent company to the telephone subsidiary company as a means of obtaining start-up capital. EPB stated that the Legislature had made it possible to issue bonds for the purpose of obtaining operating capital, but at this time they intended to rely on the loan from the parent company. Information concerning the loan would be a part of their pre-filed testimony or its amended and restated Application

- C) Cost allocations and a chart of accounts

The chart of accounts in which the Directors expressed an interest, and that EPB stated would be ready for submission on or about May 1, 1998, but was not submitted, will be an exhibit to its pre-filed testimony

- 4) Additional prefled testimony.

- A) Attachments and Exhibits supplementing the previous questions.
- B) Illustrations of safeguards

Prior to the recess called in the Hearing on April 23, 1998, the Directors expressed an interest in EPB supplementing its pre-filed testimony with appropriate attachments and exhibits. The Directors also expressed an interest in illustrations of safeguards for compliance with provisions of the law concerning cross subsidization. EPB stated at the Status Conference that it was prepared to submit these Exhibits and Illustrations as part of its amended and restated Application or as a part of its pre-filed testimony.

5) Compliance with provisions of Tenn. Code Ann § 7-52-401 to 407.

Both EPB and Time Warner stated that they were near an accommodation on the presentation of the Title 7, Tenn Code Ann. § 7-52-401 to 407, concerns expressed by both Time Warner and the Directors at the initial session of the Hearing. The other Parties, however, had not yet seen the proposed settlement of the Title 7 issues and requested that they be given copies of the information on hand at that time. Counsel for BellSouth Telecommunications, Inc. restated the position of BellSouth Telecommunications, Inc. that even though the Parties reviewed the proposed agreement it did not mean that they intended to join in any proposed settlement.

6) Will EPB amend the section on their Minority Business Plan (Tenn Code Ann § 65-5-212)?

- A) Needs to refer to race
- B) Needs to refer to religion
- C) Needs to refer to national origin

The Application speaks of women owned and disadvantaged business without addressing, with specificity, the provisions of Tenn Code Ann. § 65-5-212. The Hearing Officer suggested that EPB may find it advisable to review its Minority Business Plan prior to resubmission of its amended and restated Application. EPB stated that it had reviewed the Minority Business Plan it had submitted and had begun revisions.

- 7) When will filings be made? As of August 4, 1998, there were none received by the Authority

At this point in the discussion the Hearing Officer and the Parties discussed the dates for filing of pleadings, testimony and rebuttal. These dates are presented in the section of this Report titled, *Filing schedule and the date to resume the Hearing*.

- 8) Will EPB be amending and restating its Application?

EPB stated that it would be amending and restating its Application. The Hearing Officer stated, and EPB agreed, that amending and restating the Application will allow for a complete and unified record that the Directors can use to decide the suitability of the Application presented by EPB

- 9) Prefiled testimony will it be from the same individuals or from the individuals involved in the technical and managerial aspects of the telephone business?

Counsel for EPB stated that they would be drawing upon the testimony of their as yet unnamed technical consultant as well as those individuals who had previously submitted testimony

EPB request for a Protective Order

At the Status Conference EPB stated that it believed that data that was to be revealed in the filings it was to make subsequent to this Status Conference was confidential and should be made the subject of a protective order issued by the Hearing Officer. The other Parties to the proceeding believed that the Public Records Act applied to EPB and suggested that a protective order was inappropriate. The Hearing Officer asked counsel for EPB to provide him with any information in his possession that would indicate that EPB was exempt from the Public Records Act for purposes of this proceeding. The Hearing Officer further directed counsel for EPB to